



U.S. Department of Justice

Environment and Natural Resources Division

LJG:JML
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July 22, 2009

VIA ECF NOTIFICATION AND REGULAR U.S. MAIL

Honorable William C. Griesbach
United States District Court
Green Bay Division
125 South Jefferson Street
P.O. Box 22490
Green Bay, WI 54305-2490

Re: NCR v. Kimberly-Clark, Civ. Action No. 08-cv-00895 (E.D. Wisc.) and Appleton Papers, Inc. v. George A. Whiting Paper Co., Civ. Action No. 08-cv-00016 (E.D. Wisc.).

Dear Judge Griesbach:

This letter responds to the Court's July 1, 2009 order, directing the parties to inform the Court as to the anticipated length of the December 1, 2009, trial on Phase I issues.

On July 1, 2009, the United States filed a Motion to Clarify the Court's Scheduling Order and to Extend the United States' Deadline to File Responsive Expert Reports. Dkt. No. 463. In pertinent part, the United States' motion seeks an order clarifying that the claims filed against the U.S. Army Corps of Engineers ("Corps") by plaintiff, NCR Corporation ("NCR"), and third-party plaintiff, Menasha Corporation ("Menasha"), do not fall within the scope of issues to be tried during the Phase I litigation and should be reserved for future proceedings. NCR and Menasha have both represented to the United States that they concur in this aspect of the United States' motion. *See* Dkt. No. 463, at 2; Dkt. No. 479, at 1-2, 16. In addition to asserting United States liability based on Corps dredging activities, Menasha's third-party complaint also asserts United States liability based on recycling activities of the U.S. Environmental Protection Agency and General Services Administration. The United States' motion seeks an order clarifying that Menasha's additional theory of liability against the United States should also be deferred until the Phase I trial is complete. Dkt. No. 453, at 3. Menasha currently opposes this aspect of the United States' motion. Dkt. 479.

Many, if not most, of the facts that concern the United States' knowledge and actions on matters bearing on Phase I issues can be reduced to stipulations or admissions prior to trial. Accordingly, if the United States is adjudged to be a proper party in the Phase I trial, we believe that, as to the recycling theory of liability against the United States, the Phase I trial can be concluded in approximately two trial days. This is a conservative estimate which we stand ready to reevaluate following further procedural rulings from the Court.

We are happy to answer any questions the court may have regarding this letter.

Respectfully submitted,

s/ Joshua M. Levin
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cc: Service List

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2009, the foregoing letter to the Court was sent electronically to the following counsel: Joan Radovich at Sidley Austin LLP, jradovich@sidley.com; Evan B. Westerfield at Sidley Austin LLP, evanwesterfield@sidley.com; Kathleen L. Roach at Sidley Austin LLP, kroach@sidley.com; J. Andrew Schlickman at Sidley Austin LLP, jaschlickman@sidley.com; Dennis P. Birke at DeWitt Ross & Stevens S.C., db@dewittross.com; Ronald R. Ragatz at DeWitt Ross & Stevens S.C., rrr@dewittross.com; Megan A. Senatori at DeWitt Ross & Stevens S.C., ms@dewittross.com; Peter C. Karegeannes at Quarles & Brady, pck@quarles.com; John M. Van Lieshout at Reinhart Boerner Van Deuren S.C., jvanlieshout@reinhartlaw.com; Elizabeth K. Miles at Davis & Kuelthau, S.C., emiles@dkattorneys.com; James E. Braza at Davis & Kuelthau, S.C., jbraz@dkattorneys.com; Philip Munroe at DiRenzo & Bomier LLC, pmunroe@direnzollc.com; Scott Fleming at Weiss Berzowski Brady LLP, sbf@wbb-law.com; David Mandelbaum at Ballard Spahr Andrews & Ingersoll, LLP, mandelbaum@ballardspahr.com; Marc Davies at Ballard Spahr Andrews & Ingersoll, LLP, davies@ballardspahr.com; Ronald Varnum at Ballard Spahr Andrews & Ingersoll, LLP, varnumr@ballardspahr.com; Jennifer Simon at Ballard Spahr Andrews & Ingersoll, LLP, simonj@ballardspahr.com; Sabrina Mizrachi at Ballard Spahr Andrews & Ingersoll, LLP, mizrachis@ballardspahr.com; Mark Feldmann at Menn Law Firm, Ltd., mark-feldmann@mennlaw.com; Joseph Beisenstein at Menn Law Firm, Ltd., joseph-beisenstein@mennlaw.com; Philip Hunsucker at Hunsucker Goodstein & Nelson PC, phunsucker@hgnlaw.com; David Rabbino at Hunsucker Goodstein & Nelson PC, drabbino@hgnlaw.com; Erik Mroz at Hunsucker Goodstein & Nelson PC, mroz@hgnlaw.com; Christopher Dow at Hunsucker Goodstein & Nelson PC, cdow@hgnlaw.com; Allison McAdam at Hunsucker Goodstein & Nelson PC, macadam@hgnlaw.com; David Edquist at von Briesen & Roper, S.C., dedquist@vonbriesen.com; Christopher Riordan at von Briesen & Roper, S.C., criordan@vonbriesen.com; Patrick Wells at von Briesen & Roper, s.c., pwells@vonbriesen.com; Russell Wilson at Ruder Ware, rwilson@ruderware.com; Linda Benfield at Foley & Lardner LLP, lbenfield@foley.com; Sarah Slack at Foley & Lardner LLP, sslack@foley.com; Charles Gering at Foley & Lardner LLP, cgering@foley.com; Arthur Radke at Dykema Gossett PLLC,

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I further certify that on July 22, 2009, I cause a copy of the foregoing to be sent by
United States Postal Service, postage prepaid, to the following counsel:

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s/ Joshua M. Levin
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